

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>TRISTEN ANDERSON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>JON SOGN, Judge at Minnehaha County; KOLN FINK, Attorney court appointed at Minnehaha County; and ROBIN HOUWMAN, Judge at Minnehaha County,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">4:24-CV-04020-KES</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY AN INITIAL PARTIAL FILING FEE</p>
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Plaintiff, Tristen Anderson, an inmate at the Minnehaha County Jail, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Docket 1. Anderson moves to proceed in forma pauperis and has included his prisoner trust account report. Dockets 2, 3.

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Thus, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting *McGore v. Wigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Anderson reports an average monthly deposit of \$55.19 and an average monthly balance of \$27.67. Docket 3 at 1. Based on the information regarding Anderson's prisoner trust account, the court grants Anderson leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$11.04 (20 percent of his average monthly deposit). Anderson must pay the initial partial filing fee of **\$11.04 by March 5, 2024**. Failure to pay the filing fee by March 5, 2024, will result in dismissal without prejudice of Anderson's complaint.

Thus, it is ORDERED:

1. That Anderson's motion for leave to proceed in forma pauperis (Docket 2) is granted. Anderson must make a payment of **\$11.04 by March 5, 2024**, made payable to the Clerk, U.S. District Court. If Anderson does not pay the initial partial filing fee by March 5, 2024, his complaint will be dismissed without prejudice. The court will conduct a 28 U.S.C. § 1915A screening after he pays his initial partial filing fee.
2. That the institution having custody of Anderson is directed that whenever the amount in Anderson's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding

month to Anderson's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1) until the \$350 filing fee is paid in full.

Dated February 5, 2024.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE